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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,589	01/27/2004	Takaaki Shimada	2038-323	8968
23429 7590 04/24/2009 LOWE HAUPTMAN HAM & BERNER, LLP 1700 DIAGONAL ROAD SUITE 300 ALEXANDRIA, VA 22314				
EXAMINER				
HAND, MELANIE JO				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/764,589  
Filing Date: January 27, 2004  
Appellant(s): SHIMADA ET AL.

\_\_\_\_\_  
Benjamin Hauptman  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the reply brief filed February 10, 2009.

Responsive to the reply brief filed on February 10, 2009, a supplemental Examiner's Answer is set forth below:

**(10) Response to Argument**

Appellant's arguments filed February 10, 2009 have been fully considered but they are not persuasive. As to appellant's argument that the elastics 21 of Okuda are waist elastics, the mere fact that Okuda refers to them as waist elastics is not a sufficient argument to overcome the rejection. As can be seen in the figures of Okuda, and as explained in detail in previous Office actions, the elastics 21 of Okuda meet all of the structural limitations regarding the recited plurality of leg surrounding elastic members in independent claim 4. Further as to the argument that the elastics of Okuda are spaced apart from the undercrotch center of the diaper, appellant did not recite any structural limitations as to relative position of the recited leg-surrounding elastics that would patentably distinguish them from the leg surrounding elastics 21 of Okuda. As to the argument that Okuda does not recite leg surrounding elastics in the front region of the diaper, it is noted that the features upon which appellant relies (i.e., that there are leg surrounding elastics in both the front and rear waist regions) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Appellant takes the claim language out of context in the Remarks by quoting "in said front and rear waist regions...a plurality of leg surrounding elastic members", etc. This is not how claim 1 reads. The "in said front and rear waist regions" refers to the recited end zones, waist lateral zones and crotch lateral zones of the base sheet.

The argument that Hall does not remedy the deficiencies of Okuda is thus also not persuasive.

Appellant's arguments with regard to dependent claims 5, 6, 11, 12 and 18-22 have been fully considered but are not persuasive, as appellant's arguments depend entirely on arguments regarding the rejection of claim 4, which have been addressed *supra*.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Melanie J Hand/

Examiner, Art Unit 3761

Appellant may file another reply brief in compliance with 37 CFR 41.41 within two months of the date of mailing of this supplemental examiner's answer. Extensions of time under 37 CFR 1.136(a) are not applicable to this two month time period. See 37 CFR 41.43(b)-(c).

**A Technology Center Director or designee has approved this supplemental examiner's answer by signing below:**

/DONALD HAJEC/

Director, Technology Center 3700